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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,313	02/28/2002	David Kammer	PALM-3749.US.P	2769
7590 WAGNER, MURABITO & HAO LLP Third Floor Two North Market Street San Jose, CA 95113		EXAMINER JEAN GILLES, JUDE ART UNIT 2143 PAPER NUMBER MAIL DATE 08/21/2007 DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/086,313	KAMMER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jude J. Jean-Gilles	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06/04/2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 February 2002 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This Action is in regards to the Reply received on 06/04/2007.

### ***Response to Amendment***

1. This action is responsive to the application filed on 12/01/2006. Claims 1-6, and 12-23 have been amended. Claims have been canceled herein. No claims have been added or cancelled. Therefore claims 1-27 are now pending in the application, and represent a method and apparatus for a "**METHOD FOR INTELLIGENTLY SELECTING A WIRELESS COMMUNICATION ACCESS POINT**".

### ***Response to Amendments/Arguments***

2. In the reply, no claim has been amended or canceled. Claims 1-45 represent a method and apparatus for an "**METHOD FOR INTELLIGENTLY SELECTING A WIRELESS COMMUNICATION ACCESS POINT**."

Applicant's arguments with respect to the independent claims have been carefully considered, but are not deemed fully persuasive. Applicant's arguments are deemed moot in view of the existing ground of rejection as explained here below. Applicants have made no amendments to the independent claims to perhaps place them in condition for allowance.

The dependent claims stand rejected as articulated in the previous Office Action and all objections not addressed in Applicant's response are herein reiterated.

In response to Applicant's arguments, 37 CFR § 1.11(c) requires applicant to "clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. He or she must show the amendments avoid such references or objections."

Applicant's Request for Reconsideration filed on 06/04/2007 has been carefully considered but is not deemed fully persuasive. However, because there exists the likelihood of future presentation of this argument, the Examiner thinks that it is prudent to address Applicants' main points of contention:

A: Applicants submit that Heinonen discloses communicating different messages between the user device and the access point after the access point to which to connect has been identified whereas steps (a) - (d) of independent Claim 1 are directed to identifying the access point such that the wireless device can connect to, which occurs before initiating a connection to the access point. As such, Heinonen fails to either teach or suggest steps (a) - (d) of independent Claim 1, which occur before initiating a connection to the access point.

B: Applicants content that "Heinonen fails to either teach or suggest the recited limitation whereby the initiator device compares device addresses of the plurality of second wireless messages for address matches with the list of recognized device addresses, as claimed because Heinonen discloses that the access point performs the matching."

C: Applicants submit that Clark does not remedy Heinonen's failure to disclose that the initiator device compares device addresses of the plurality of second wireless messages for address matches with the list of recognized device addresses, as claimed.

D: Applicants content that "Clark discloses a determination of fitness of an instruction sequence. Applicants do not understand the determination of fitness of an instruction sequence to either teach or suggest applying a fitness function to address matches with the list of recognized device addresses, as claimed."

E: Applicants content that with respect to claim 23, Heinonen fails to either teach or suggest the recited limitation whereby in a wireless device comparing the list of access point addresses on a memory cache to the list of current network access point addresses, as claimed.

As to point A, Applicants contend that Heinonen in detail discloses the limitations of the claimed invention. However, in view of Applicants' remarks, the Office respectfully concludes that the applicants mischaracterize the teachings of Heinonen and that the arguments presented above is moot. With respect to claim 1, specifically, applicants contend that Heinonen does not disclose steps a-d of claim prior to initiating a connection to the access point. The argument appears to be that Heinonen allegedly discloses communicating different messages between the user device and the access point after the access point to which to connect has been identified. Applicants cherry pick passages in the patent of Heinonen in order to present the reference in a light that

is different from the claimed invention. The Examiner respectfully compels Applicants to capture the essence of the teachings of the prior art reference. See Heinonen; column 2, lines 5-25; column 7, lines 50-63; column 11, lines 32-53.

As to point B; see Heinonen column 13, lines 60-67.

As to point C, it is the position of the Examiner that Heinonen teaches address comparison with respect to wireless message for address matchines for list of known address (see Heinonen; column 9, lines 25-50).

As to point D, the prior art reference of Clark teaches this limitation of the claim. In fact, Clark teaches a fitness function [see par. 0325] capable of performing matching of inputs and output numbers. It is obvious that this function can be used to perform the same operations, substituting these numbers for values representing device addresses.

As to point E, see point D above.

Examiner notes that no new matter has been added and that the new claims are supported by the application as filed. However, applicant has failed in presenting claims and drawings that delineate the contours of this invention as compared to the cited prior art. Applicant has failed to clearly point out patentable novelty in view of the state of the art disclosed by the references cited that would overcome the 102(e) and 103(a) rejections applied against the claims, the rejection is therefore sustained.

***Allowable Subject Matter***

3. Claims 10 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-9, and 11-20, and 22-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Heinonen et al (hereinafter Heinonen) U.S. Patent No. 7,151,764 B1 in view of Clark U.S. Pub. No. 2001/0011254 A1.

**Regarding claim 1:** Heinonen discloses the invention substantially as claimed.

Heinonen teaches a method of connecting to a wireless communication access point (fig. 1) comprising:

- a) an initiator device broadcasting a first wireless message to a plurality of potential access point devices, said initiator device storing therein a list of recognized device addresses for connecting thereto (fig. 4A-C; column 13, lines 60-67; column 14, lines 1-30; *Note that the first message is the inquiry package 500*);
- b) in response to said initiator device broadcasting said first wireless

message, said initiator device receiving a plurality of second wireless messages from a set of said plurality of potential access point devices, wherein said set of said plurality of potential access point devices is defined by at least one physical characteristic (column 13, lines 60-67; column 14, lines 1-30; *the second wireless message here is the inquiry packet 510; and the one physical characteristic here is either the access in the address field 520 or the CoD value in the device field 522*);

- c) said initiator device comparing device addresses of said plurality of second wireless messages for address matches with said list of recognized device addresses (column 9, lines 25-50);
- e) connecting to an access point device corresponding to said single address (column 9, lines 25-50); however Heinonen does not disclose in details the step of: d) applying a fitness function to address matches of said c) to determine a single address, wherein said fitness function defines an acceptable criteria for determining said single address.

In the same field of endeavor, Clark discloses an "... Software object 61, upon receipt of communication 60 from software object 59, acts to select N instruction sequences 298 sorted by fitness (discussed below), remove them from the Original Software 9 (creating Modified Software 7), and send/communicate 13 the removed instruction sequences 298 to the License Server

4. Detail of the operation of software object 61 is depicted in FIG. 9. The number N can be chosen to reflect the level of security desired. The fitness of an instruction sequence 298 is determined by matching the inputs and outputs

*recorded by software objects 125 and 126 from both execution #1 and execution #2 of the Original Software 9. The fitness (or security) of an instruction sequence 298 is equal to the number of input matches with corresponding output differences plus the number of input differences..." [see Clark; fig. 9, item 196; Par. [0325].*

Accordingly, it would have been obvious to one of ordinary skill in the networking art at the time the invention was made to have incorporated Clark's teachings of using dynamic and static members within the nested group members with the teachings of Heinonen, for the purpose of improving the ability of a network "...to provide security and reliability to the system as stated by Clark"(see [0325]). By this rationale, **claim 1** is rejected.

**Regarding claims 2-9, 11-20, and 22-27,** the combination Heinonen – Clark discloses:

2. (Currently Amended) The method as described in Claim 1 wherein set of said physical characteristic is defined by a quantity of device threshold (see Heinonen; column 13, lines 60-67; column 14,lines 1-30).
3. (Currently Amended) The method as described in Claim 1 wherein set of said physical characteristic is defined by a time of discovery threshold (see Heinonen; column 7, lines 24-62; column 14, lines 1-30).
4. (Currently Amended) The method as described in Claim 1 wherein said criteria is an occupancy level less than a predetermined threshold (see Heinonen; column 7, lines 24-62; column 14, lines 1-30).

5. (Currently Amended) The method as described in Claim 1 wherein said criteria is signal strength greater than a predetermined threshold(see Heinonen; column 7, lines 24-62; column 14, lines 1-30).

6. (Currently Amended) The method as recited in Claim 1 wherein said criteria is residing within a predetermined physical distance (see Heinonen; column 5, lines 53-67; column 13, lines 60-67; column 14,lines 1-30;).

7. (Original) The method as recited in Claim 1 wherein said initiator device and said responding device are Bluetooth-enabled devices (see Heinonen; items 100, 140 and 180; column 5, lines 53-67).

8. (Original) The method as recited in Claim 1 wherein said access point device is coupled to a network comprising a network server (see Heinonen; items 100, 140 and 180; column 5, lines 53-67).

9. (Original) The method of Claim 8 wherein a list of all current network access point addresses is maintained on said network server (see Heinonen; items 100, 140 and 180; column 5, lines 53-67).

11. (Original) The method of Claim 9 wherein said initiator device abstracts said list of access point addresses into a single abstract name (see Heinonen; column 13, lines 60-67; column 14,lines 1-30).

12. (Currently Amended) A wireless communication device (see Heinonen; fig. 1A-C, 2A) comprising:

a bus (see Heinonen; fig. 1A-C, 2A);

a wireless transceiver unit coupled to said bus for communicating with

responding devices (see Heinonen; fig. 1A-C, 2A);  
a memory cache coupled to said bus (see Heinonen; fig. 1A-C, 2A); and  
a processor coupled to said bus, said processor for performing a method  
for selecting and connecting to a responding access point device (see Heinonen; fig.  
1A-C, 2A), said method comprising:  
a) an initiator device broadcasting a first wireless message to a  
plurality of potential access point devices, said initiator device storing therein a  
list of recognized device addresses for connecting thereto (see Heinonen; fig. 4A-C;  
column 13, lines 60-67; column 14, lines 1-30; *Note that the first message is the inquiry  
package 500*);  
b) in response to said initiator device broadcasting said first wireless  
message, said initiator device receiving a plurality of second wireless messages  
from a set of said plurality of potential access point devices, wherein said set of  
said plurality of potential access point devices is defined by at least one physical  
characteristic (see Heinonen; fig. 4A-C; column 13, lines 60-67; column 14, lines 1-30);  
c) said initiator device comparing device addresses of said plurality of  
second wireless messages for address matches with said list of recognized  
device addresses (see Heinonen; column 9, lines 25-50);  
d) applying a fitness function to address matches of said c) to  
determine a single address, wherein said fitness function defines an acceptable  
criteria for determining said single address [see Clark; fig. 9, item 196; Par. [0325]]; and  
e) connecting to an access point device corresponding to said single

address(column 9, lines 25-50);

13. (Currently Amended) The method device as described in Claim 12 wherein set of said physical characteristic is defined by a quantity of device threshold.

14. (Currently Amended) The method device as described in Claim 12 wherein set of said physical characteristic is defined by a time of discovery threshold (see Heinonen; column 7, lines 24-62; column 14, lines 1-30).

15. (Currently Amended) The method device as described in Claim 12 wherein said criteria is an occupancy level less than predetermined threshold (see Heinonen; column 7, lines 24-62; column 14, lines 1-30).

16. (Currently Amended) The device as described in Claim 12 wherein said criteria is signal strength greater than a predetermined threshold(see Heinonen; column 7, lines 24-62; column 14, lines 1-30).

17. (Currently Amended) The method device as recited in Claim 12 wherein said criteria is residing within a predetermined physical distance (see Heinonen; column 5, lines 53-67; column 13, lines 60-67; column 14,lines 1-30).

18. (Currently Amended) The method device as recited in Claim 12 wherein said initiator device and said responding device are Bluetooth-enabled devices (see Heinonen; items 100, 140 and 180; column 5, lines 53-67).

19. (Currently Amended) The method device as recited in Claim 12 wherein said access point device is coupled to a network comprising a network server (see Heinonen; items 100, 140 and 180).

20. (Currently Amended) The method device of Claim 19 wherein a list of all current network access point addresses is maintained on said network server (see Heinonen; items 100, 140 and 180).

22. (Currently Amended) The method device of Claim 20 wherein said initiator device abstracts said list of access point addresses into a single abstract name (see Heinonen; column 13, lines 60-67; column 14,lines 1-30).

23. (Currently Amended) In a wireless communication device having a wireless transceiver and a memory cache comprising a list of access point addresses, a method for updating said list of access point addresses comprising:

- a) connecting said wireless communication device with a network server, said network server comprising a list of current network access point addresses for a network(see Heinonen; fig. 4A-C; column 13, lines 60-67; column 14,lines 1-30);
- b) comparing said list of access point addresses on said memory cache to said list of current network access point addresses (see Heinonen; column 9, lines 25-50);
- c) in response to said comparing, adding to said list of access point addresses in said memory cache of said wireless communication device any addresses found on said list of current network access point addresses and not found on said list of access point addresses(see Heinonen; column 9, lines 25-50); and
- d) in response to said comparinq, deleting from said list of access point addresses in said memory cache of said wireless communication device

any addresses not found on said list of current network access point addresses and found on said list of access point addresses [see Clark; fig. 9, item 196; Par. [0325].

24. (Original) The method as recited in Claim 23 wherein said wireless communication device is a Bluetooth-enabled device (see Heinonen; items 100 and 140).

25. (Original) The method as recited in Claim 23 wherein connecting said wireless communication device with a network server comprises connecting through an access point (see Heinonen; item 180);

26. (Original) The method as recited in Claim 23 wherein said access point is a Bluetooth enabled device (see Heinonen; items 100, 140 and 180).

27. (Original) The method as recited in Claim 23 wherein said wireless communication device is a portable computer system (see Heinonen; column 5, lines 53-67; column 13, lines 60-67).

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley, can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3719.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Jude Jean-Gilles

Patent Examiner

Art Unit 2143

August 13, 2007

DAVID WILEY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100